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Marco Dowidat-Eskes

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EXAMINER

SLAWSKI, BRIAN R

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/594,326	<b>Applicant(s)</b> DOWIDAT-ESKES ET AL.	
	<b>Examiner</b> BRIAN R. SLAWSKI	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-24,26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) 15,16,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-14,17-24, 26, and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

**PATTERNED LINOLEUM SHEETING**

***Detailed Action***

1. Applicant's request for reconsideration filed January 14, 2010, was received. Claims 1-4, 11, and 12 were amended. Claims 25 and 27 were cancelled.
2. The text of those sections of Title 35, U.S. Code, not included in this action can be found in the prior Office Action issued on October 14, 2009.

***Claim Rejections—35 USC §112***

3. The rejections under 35 U.S.C. 112, second paragraph, of claims 2 and 11 are withdrawn because these claims have been amended to provide antecedent basis for all terminology.

***Claim Rejections—35 USC §103***

4. Claims 1-3, 6-9, 17, 19, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markmann et al. (DE 199 15 868) in view of Humphreys et al. (US 1,873,587). (Citations to Markmann et al. refer to the corresponding US 7,297,366, which is the English-language equivalent to Markmann et al. DE '868).

Regarding claim 1, Markmann et al. teach a method for producing a patterned linoleum sheeting by rolling a green (i.e., unfinished) linoleum sheet B from a sheet rolling mill 1, dispersing differently-colored particles C onto the surface of the linoleum sheet B, cutting the resulting green linoleum into pieces about 2 m long, layering the cut

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green linoleum pieces with a sheet placer 6 to form a tiled stack of sheets E, and calendering the tiled stack of sheets in a sheet calender 7 to form patterned (i.e., speckled with the dispersed particles C) linoleum sheeting F (Fig. 1, 3, 4a; col. 2, L. 42-46, L. 50-57; col. 3, L. 3-9, L. 13-15, L. 28-30, L. 33-37, L. 50-55, L. 63-67; col. 4, L. 1-12, L. 45-50; col. 5, L. 34-57, L. 63-66; col. 6, L. 23-28). While Markmann et al. teach that the added particles C may have a composition different from that of the green linoleum, they do not explicitly teach that these particles are a non-linoleum material, such as a metallic material or pigment, differing from the raw materials of the green linoleum mixture.

However, Humphreys et al. also teach a method of decorating a linoleum sheet 6 by dispersing and embedding a flat layer of non-linoleum material 7 onto the surface or into the depth thereof during the linoleum sheet's production. Humphreys et al. teach that lustrous materials are preferred, such as aluminum powder for providing the linoleum with a metallic sheen, or an effect pigment based on mica for providing the linoleum with an appearance resembling natural stone (Fig. 1, 2; p. 1, L. 1-15, L. 23-68, L. 74-77). It would have been obvious to one of ordinary skill in the art to apply these materials onto the green linoleum sheet B of Markmann et al., in addition to or as a substitute for the colored particles C of Markmann et al., in order to provide the alternative visual effects taught by Humphreys et al.

Regarding claim 2, Markmann et al. teach a method for producing a patterned linoleum sheeting by forming the linoleum sheet B from a scraped (i.e., not yet calendered) linoleum mixture A, applying differently-colored particles C onto the sheet B

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of scraped linoleum mixture, and calendering the scraped linoleum mixture with particles C in a mangle 5 to form a green (i.e., unfinished) linoleum sheeting (Fig. 1; col. 3, L. 3-4; col. 5, L. 34-47). Markmann et al. do not explicitly teach that the particles C may be a non-linoleum metallic or pigment material differing from the raw materials of the linoleum mixture A. However, Humphreys et al. teach a similar method of making a linoleum sheet with an improved appearance by embedding a non-linoleum lustrous material, such as aluminum powder to provide a metallic sheen, or a mica pigment to provide a stonelike appearance, into a scraped linoleum mixture either before or after the mixture is applied to a backing (Fig. 1, 2; p. 1, L. 1-15, L. 23-68, L. 74-77), where this added material is in the form of a dispersion (p. 1, LL. 40-45, LL. 55-59). It would have been obvious to one of ordinary skill in the art to apply the non-linoleum materials of Humphreys et al. to the scraped linoleum mixture of Markmann et al., to complement or replace the colored particles C, in order to provide the attractive metallic sheen or stonelike appearance taught by Humphreys et al.

Regarding claim 3, Markmann et al. teach further processing the green linoleum by cutting it into pieces about 2 m long, layering the cut green linoleum pieces with a sheet placer 6 to form a tiled stack of sheets E, and calendering the tiled stack of sheets in a sheet calender 7 to form patterned linoleum sheeting F (col. 5, L. 47-57).

Regarding claims 6, 7, 17, 19, and 21, as explained with respect to claims 1 and 2 above, it would have been obvious to one of ordinary skill in the art to apply the metallic (e.g., aluminum or bronze) powder or lustrous effect pigment based on mica taught by Humphreys et al. (p. 1, LL. 4-11, LL. 40-45, LL. 74-77) to the scraped linoleum

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mixture of Markmann et al., in order to provide a metallic sheen or appearance resembling marble to the finished linoleum sheeting.

Regarding claims 8 and 23, Humphreys et al. suggest that their non-linoleum metallic powder or effect pigment can be applied as a flat layer either to the entire width of the green linoleum (by stirring it into the linoleum mixture just before its application to a backing, or by dropping it uniformly on top of the mixture after its application to the backing) or to only a portion of the green linoleum (by applying the non-linoleum material through stencils to form inlaid patterns in the linoleum sheet having certain portions contrasting strikingly with others) (p. 1, LL. 40-51, LL. 74-91). Similarly, Markmann et al. teach that their decorative colored particles C can be applied as a flat layer either uniformly and continuously (i.e., across the green linoleum's entire width) or to only a portion of the green linoleum, e.g., in the form of geometric patterns (col. 3, L. 33-45), so that it would have been obvious to one of ordinary skill in the art to apply the flat layer of decorative metallic powder or pigment of Humphreys et al. either to the entire width or to a geometrically patterned portion of the green linoleum in light of the combined teachings of Markmann et al. and Humphreys et al.

Regarding claim 9, Humphreys et al. teach that their flat layer of non-linoleum metallic powder or effect pigment can be either confined to just below the surface of the finished linoleum sheet or dispersed throughout its thickness (Fig. 1, 2; p. 1, LL. 18-22, LL. 49-51, LL. 55-68), while Markmann et al. teach that their rolled (i.e., calendered) green linoleum sheet is preferably 0.5 mm to 2.5 mm thick (col. 3, LL. 28-32), so that it would have been obvious to one of ordinary skill in the art to apply the flat layer of non-

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linoleum material taught by Humphreys et al. to the green linoleum of Markmann et al. in a thickness of 5  $\mu\text{m}$  to 1000  $\mu\text{m}$  (1 mm).

5. Claims 4, 10, 18, 20, 22, 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markmann et al. and Humphreys et al. as applied to claims 1-3, 6-9, 17, 19, 21, and 23 above, and further in view of Egleson (US 1,691,708).

Regarding claims 4 and 10, the combination of Markmann et al. and Humphreys et al. does not specifically teach applying additional non-linoleum material to the green linoleum after calendering the scraped linoleum mixture A and non-linoleum material of Humphreys et al. through the mangle 5. However, Egleson teaches a method of providing additional decoration to a linoleum sheet 1 already having a desired color pattern formed therein, by embossing a pattern 4 of light-reflecting V-shaped grooves 5 in the surface of the linoleum sheet, e.g., with an embossing roll, then filling the grooves with a transparent non-linoleum coating 10. Egleson teaches that the resulting pattern of light-reflecting surfaces recessed beneath the transparent coating produces a striking and attractive contrast with the smooth portions of the linoleum (Fig. 1-3; p. 1, L. 6-23, L. 33-39, L. 49-67, L. 84-97; p. 2, L. 4-22, L. 49-59), so that it would have been obvious to one of ordinary skill in the art to apply Egleson's embossed predetermined recesses and non-linoleum coating therein onto the green linoleum taught by the combination of Markmann et al. and Humphreys et al. after its calendering through the mangle 5, in order to provide the green linoleum with a more attractive surface.

With particular regard to claim 10, Egleson depicts grooves 5 formed in the linoleum sheet 1 to a depth of about 35-40% of the linoleum sheet's thickness (Fig. 2, 3), so that it would have been obvious to one of ordinary skill in the art to apply such grooves onto the linoleum sheet of Markmann et al. to have a depth from 5% to 60% of the linoleum sheet's thickness.

Regarding claims 18, 20, and 22, as explained with respect to claims 1 and 2 above, it would have been obvious to one of ordinary skill in the art to apply the metallic (e.g., aluminum or bronze) powder or lustrous effect pigment based on mica taught by Humphreys et al. (p. 1, LL. 4-11, LL. 40-45, LL. 74-77) to the scraped linoleum mixture of Markmann et al., in order to provide a metallic sheen or appearance resembling marble to the finished linoleum sheeting.

Regarding claim 24, Humphreys et al. suggest that their non-linoleum metallic powder or effect pigment can be applied as a flat layer either to the entire width of the green linoleum (by stirring it into the linoleum mixture just before its application to a backing, or by dropping it uniformly on top of the mixture after its application to the backing) or to only a portion of the green linoleum (by applying the non-linoleum material through stencils to form inlaid patterns in the linoleum sheet having certain portions contrasting strikingly with others) (p. 1, LL. 40-51, LL. 74-91). Similarly, Markmann et al. teach that their decorative colored particles C can be applied as a flat layer either uniformly and continuously (i.e., across the green linoleum's entire width) or to only a portion of the green linoleum, e.g., in the form of geometric patterns (col. 3, L. 33-45), so that it would have been obvious to one of ordinary skill in the art to apply the



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flat layer of decorative metallic powder or pigment of Humphreys et al. either to the entire width or to a geometrically patterned portion of the green linoleum in light of the combined teachings of Markmann et al. and Humphreys et al.

Regarding claim 26, Humphreys et al. teach that their flat layer of non-linoleum metallic powder or effect pigment can be either confined to just below the surface of the finished linoleum sheet or dispersed throughout its thickness (Fig. 1, 2; p. 1, LL. 18-22, LL. 49-51, LL. 55-68), while Markmann et al. teach that their rolled (i.e., calendered) green linoleum sheet is preferably 0.5 mm to 2.5 mm thick (col. 3, LL. 28-32), so that it would have been obvious to one of ordinary skill in the art to apply the flat layer of non-linoleum material taught by Humphreys et al. to the green linoleum of Markmann et al. in a thickness of 5  $\mu$ m to 1000  $\mu$ m (1 mm).

Regarding claim 28, it would have been obvious to the skilled artisan to form grooves in the linoleum sheet of Markmann et al. with a depth from 5% to 60% of the linoleum sheet's thickness, because Egleson teaches such grooves extending about 35-40% into the linoleum sheet's thickness, as explained with respect to claim 10 above.

6. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markmann et al. in view of Humphreys et al. (US 1,873,587) and Stroppiana (US 5,217,554).

Regarding claim 11, Markmann et al. teach a method for producing a patterned (marbled or speckled) linoleum sheeting by producing a single-color or multicolor green (i.e., unfinished) linoleum sheet B from a sheet rolling mill 1, coating the green linoleum

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B with differently colored particles C, calendering the coated green linoleum in a mangle 5 to form a marbled or speckled surface thereon, cutting the resulting green linoleum into pieces about 2 m long, layering the cut green linoleum pieces with a sheet placer 6 to form a tiled stack of sheets E, and calendering the tiled stack of sheets in a sheet calender 7 to form patterned linoleum sheeting F, which is further processed by connecting to a conventional substrate fabric G to form a final linoleum sheeting (Fig. 1, 3, 4a; col. 1, L. 18-40; col. 2, L. 58-62; col. 3, L. 3-9, L. 13-15, L. 28-30; col. 4, L. 45-52, L. 57-60; col. 5, L. 34-57). While Markmann et al. do not explicitly teach that the particles C are a non-linoleum material differing from the raw materials of the linoleum mixture A, Humphreys et al. teach that coating a green linoleum with metallic powder or mica pigment produces a finished linoleum with an attractive metallic sheen or resemblance to natural stone (Fig. 1, 2; p. 1, L. 1-15, L. 23-68, L. 74-77), as described with respect to claims 1 and 2 above, so that it would have been obvious to one of ordinary skill in the art to coat the green linoleum B of Markmann et al. with the metallic powder or mica pigment of Humphreys et al. in addition to the particles C.

Markmann et al. do not specifically teach processing the coated green linoleum to form granules or chips immediately after calendering through the mangle 5 or after cutting, layering, and calendering through sheet calender 7. However, Markmann et al. teach that in similar processes for making speckled linoleum sheets from mixed multicolored materials, the patterning tends to elongate undesirably upon calendering, and note that, while their process unexpectedly reduces this effect, some orientation of

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the speckles by calendering may occur in their finished linoleum sheet (col. 2, L. 35-41; col. 4, L. 26-33).

Stroppiana also addresses the problem of orientation of marbled or speckled patterns in linoleum upon calendering, by scraping the surface of such a calendered linoleum A to form granules or chips 6, which are then allowed to fall back onto the scraped linoleum sheet downstream and be recompressed thereunto by rollers 7, producing a linoleum sheet with uniform non-oriented speckles (Abstract; Fig. 1, 4, 5; col. 1, L. 7-18, L. 21-29; col. 2, L. 35-50, L. 56-63; col. 3, L. 21-34, L. 39-48).

Stroppiana further notes that, alternatively, the chips may be deposited on a different substrate or compressed directly to form a new linoleum cover sheet without the use of a substrate (col. 3, L. 67-68; col. 4, L. 1-9). Thus it would have been obvious to one of ordinary skill in the art to apply Stroppiana's post-calendering treatment to form chips from the coated and calendered linoleum of Markmann et al., and then to compress the chips into a linoleum sheet, in order to ensure that the linoleum's pattern is not distorted after calendering.

Regarding claims 12-14, Humphreys et al. teach coating their green linoleum with metallic (e.g., aluminum or bronze) powder or a lustrous effect pigment based on mica (p. 1, LL. 4-11, LL. 40-45, LL. 74-77) to achieve a metallic sheen or resemblance to marble in their finished linoleum sheeting, so that it would have been obvious to coat the green linoleum of Markmann et al. in order to achieve the same effect.

### ***Response to Arguments***

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7. Applicant's arguments filed on January 14, 2010, have been fully considered but are not persuasive. Applicant argues that the colored particles C added by Markmann et al. to their green linoleum sheet to produce a speckled pattern are not made of a non-linoleum material which is different from the raw materials used in the production of the green linoleum sheet, and which is a metallic material and/or a pigment, and therefore that Markmann et al. do not anticipate the claims as currently amended. Applicant further argues that Humphreys et al. as cited in the previous Office action only describe a linoleum mixture including lustrous metallic particles applied to a backing, and therefore do not suggest the presently claimed invention.

The examiner responds that the combination of Markmann et al. and Humphreys et al. would have motivated one of ordinary skill in the art to arrive at the invention as presently claimed. Like Markmann et al., Humphreys et al. teach coating a green linoleum mixture with additional particles either before or after the linoleum mixture is applied to a backing, so that the added particles will impart a desired visual effect to the finished linoleum sheet. In particular, Humphreys et al. teach that adding metallic particles, e.g., of aluminum or bronze, will give the finished linoleum an attractive metallic lustre, while adding a mica effect pigment will give the finished linoleum the appearance of natural stone or marble (p. 1, LL. 1-11, LL. 40-51, LL. 74-77). It would have been straightforward and obvious to the skilled artisan to apply the non-linoleum particles of Humphreys et al. to the green linoleum mixture of Markmann et al., as a substitute for or in addition to the colored particles C, in order to achieve the metallic lustre or stonelike appearance taught by Humphreys et al. in the finished linoleum.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN R. SLAWSKI whose telephone number is (571)270-3855. The examiner can normally be reached on Monday to Thursday, 7:30 a.m. to 5:00 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino, can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R. Slawski/  
Examiner, Art Unit 1791

B.R.S.

/Richard Crispino/  
Supervisory Patent Examiner, Art Unit 1791